UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,269	04/03/2001	Renee Frengut	1017.8003	2080

44538 7590 02/02/2009

DANIEL S. POLLEY, P.A.
1215 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FL 33301

EXAMINER	
CHAMPAGNE, DONALD	
ART UNIT	PAPER NUMBER
3688	

MAIL DATE	DELIVERY MODE
02/02/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RENEE FRENGUT, JOHN BURDICK, and
JOHN BELLANTONI

Appeal 2008-5183
Application 09/825,269
Technology Center 3600

Decided:[1] January 30, 2009

Before, HUBERT C. LORIN, DAVID B. WALKER, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

---

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-30 which are all of the pending claims in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We AFFIRM-IN-PART.

THE INVENTION

The invention provides a consumer with a network interface tailored in appearance and content to the consumer's specifications. A customized interface is achieved by generating a computer file or "page" based on information about the user and advertisement. Information about the user comprises a user profile including any preferences for content or layout of the page. Information about the advertisements comprises an ad profile including a description of the ad and optionally a definition of the targeted audience. The user profiles and ad profiles are compared to determine matches according to a prescribed parameter. (Specification, 3:1-15). Claim 1, reproduced below, is representative of the subject matter of appeal.

> 1. A method for generating a customized interface, comprising the steps of:
>
> associating in a computer one or more ads with respective ad profiles;
>
> displaying an online page to one or more users seeking information from the one or more users and allowing the one or more

users to knowingly enter their information for creating their respective one or more user profiles;

associating in a computer the one or more user profiles with the respective one or more users, each user profile created from information inputted by a corresponding user and transmitted to the computer, wherein each user personally and knowingly assists in the creation of his or her user profile by knowingly inputting the information and is aware that the information will be used to create a customized interface for each user profile,

determining matching ad profiles by comparing the ad profiles with user profiles for matches; and

selectively including in the interface of a user at least one of the one or more ads associated with the ad profiles matching a user profile associated with the user.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Gerace	US 5,848,396	Dec. 8, 1998
Tuzhilin	US 6,236,978 B1	May 22, 2001

The following rejections are before us for review:

1. Claims 1-3, 6-10, 12-23, and 27-30 are rejected under 35 U.S.C. § 102(b) as anticipated by Gerace.

2. Claims 11 and 24-26 are rejected under 35 U.S.C. § 103(a) as unpatentable over Gerace.

3. Claims 4-5 are rejected under 35 U.S.C. § 103(a) as unpatentable over Gerace and Tuzhilin.

THE ISSUE

At issue is whether the Appellants have shown that the Examiner erred in making the aforementioned rejections.

With regards to claims 1-12 and 15-30 this issue turns on whether Gerace discloses the user knowingly inputting information for each user profile.

With regards to claims 13-14 this issue turns on whether Gerace discloses that the ads included in the interface are restricted to the amount of space defined in the user profile.

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence[2]:

FF1. Gerace discloses that a User Object 37 is set up to maintain a user profile. The user profile includes the user's chosen nickname, language, demographic and lifestyle information (Col. 5:63-Col. 6:13).

FF2. As Gerace discloses that the user profile includes the user's chosen nickname, the user must knowingly enter this information into the system on a web page.

[2] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

FF3. Gerace discloses that advertisements are transmitted for display to the user based on the psychographic and demographic profiles of the user to provide targeted marketing (Col. 2:24-35).

FF4. Gerace does not disclose that the ads included in the interface are restricted to the amount of space defined in the user profile (Col. 7: 39-40 and Col. 7:53-57).

PRINCIPLES OF LAW

Principles of Law Relating to Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

Principles of Law Relating to Obviousness

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, (1966). *See also KSR*, 127 S.Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

ANALYSIS

Claims 1-14 and 16-30

The Appellants argue as a group the rejection of claims 1-2, 6-10, 12, 15-23, and 27-30 under 35 U.S.C. § 102(b) as anticipated by Gerace. We select claim 1 as representative of this group and the remaining claims stand or fall with claim 1. See 37 C.F. R. § 41.37(c)(1)(vii)(2007). The Appellants argue that the rejection of claim 1 is improper because the claim requires that a page is displayed to the user seeking information from the user and allowing the user to knowingly enter his or her information to create the user profile (Br. 10). The Appellants argue that Gerace uses "cookies" to monitor the online activities unbeknownst to the user instead of the user profile being created from information intentionally input by the user (Br. 9-10).

In contrast, the Examiner has found that Gerace discloses the claimed limitations of the rejected claim 1. The Examiner had determined that Gerace discloses a user profile being created by the user (Ans. 7). The

Examiner has also determined that Gerace discloses matching the ad profiles and user profiles (Ans. 7).

We agree with the Examiner. Gerace discloses that a User Object 37 is set up to maintain a user profile. The user profile includes a user chosen nickname, language, demographic and lifestyle information (FF1). This user profile must be entered on a page and "knowingly provided" since the user must enter for example their nickname into the system (FF2). Gerace also discloses that advertisements are transmitted for display to the user based on the psychographic and demographic profiles of the user to provide targeted marketing (FF3). As Gerace discloses that the demographic profile which is entered by the user (FF1, FF2) is used to match the ads to the user (FF3) the argued claim limitations are met by the reference. For the above reasons, the rejection of claims 1-2, 6-10, 12, 15-23, and 27-30 under 35 U.S.C. § 102(b) as anticipated by Gerace is sustained. The Appellants' arguments for claim 3 are the same as those addressed above and the rejection of claim 3 under 35 U.S.C. § 102(b) as anticipated by Gerace is sustained for the above reasons.

The Appellants' arguments with regard to claims 11 and 24-26 under 35 U.S.C. § 103(a) as unpatentable over Gerace are the same as presented for claim 1 and the rejection of these claims is sustained for the reasons given above.

The Appellants' arguments with regard to claims 4 and 5 under 35 U.S.C. § 103(a) as unpatentable over Gerace and Tuzhilin are the same as presented for claim 1 and the rejection of these claims is sustained for the reasons given above.

Claims 13-14

The Appellants argue that the rejection of claims 13-14 under 35 U.S.C. § 102(b) as anticipated by Gerace is improper because Gerace fails to disclose the user defining the amount or percentage of space for the ads (Br. 11). In contrast, the Examiner has determined that Gerace does disclose such a feature in Column 7, lines 39-40 and 53-57 (Ans. 8).

We agree with the Appellants. Gerace does not disclose that the ads included in the interface are restricted to the amount of space defined in the user profile (FF 4). For these reasons, the rejection of claims 13-14 under 35 U.S.C. § 102(b) as anticipated by Gerace is not sustained.

CONCLUSIONS OF LAW

We conclude that Appellants have failed to show that the Examiner erred in rejecting claims 1-3, 6-10, 12, 15-23, and 27-30 under 35 U.S.C. § 102(b) as anticipated by Gerace.

We conclude that Appellants have shown that the Examiner erred in rejecting claims 13-14 under 35 U.S.C. § 102(b) as anticipated by Gerace.

We conclude that Appellants have failed to show that the Examiner erred in rejecting claims 11 and 24-26 are under 35 U.S.C. § 103(a) as unpatentable over Gerace.

We conclude that Appellants have failed to show that the Examiner erred in rejecting claims 4-5 under 35 U.S.C. § 103(a) as unpatentable over Gerace and Tuzhilin.

DECISON

The Examiner's rejection of claims 1-12 and 15-30 is sustained. The Examiner's rejection of claims 13-14 is not sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

LV:

DANIEL S. POLLEY, P.A.
1215 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FL 33301